IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4250 OF 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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M/S. NOVA PETROCHEMICALS LTD. & ANR. - Petitioner(s)

Versus

STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :

MR. PARESH M. DAVE for Petitioner(s) : 1 - 2.
MR. SIRAJ GHORI, AGP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 14/09/2005

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The present petitioner, M/s.Nova Petrochemicals Limited, which is engaged in manufacturing the artificial

fibre/yarn, made an application to the Industries Department for its registration to avail the benefits under the Capital Investment Incentive to Premier/Prestigious Unit Scheme 1995 – 2000. Certain benefits were conferred upon the Industrial Units, but, it appears that the scheme, which was operative between 16th August, 1995 to 15th August, 2000, was modified a little by Government Resolutions dated 29th April, 2000 and 12th April, 2001, directing, *inter alia*, that cases of the industries, which were in the pipeline, during the period of 16th August, 1995 to 15th August, 2000, would also be considered for grant of certain exemption or deferment in case such an industry has started investing money and has already applied for its registration with the Commissioner of Industries. It appears that the present petitioner, who, according to its allegations, came into production of particular yarns much before the closure of the Scheme or much before coming into existence of the said two Government Resolutions, made an application for its registration somewhere in the year 2001 and applied for grant of the exemption/deferment of tax for a period of nine years. The application was favourably considered by the High Power Committee, which made recommendations in favour of the petitioners, but, the benefits were not conferred upon the petitioners, observing, *inter alia*, that under the two Government Resolutions, an application for registration was required to be made before the cut-off date i.e. 15th August, 2000 and as the petitioner had not made the application for

its registration before the cut-off date, it would not be entitled to the benefits as an established industry under the original scheme nor would be entitled to the benefits as an industry in the pipeline.

2. The petitioners have filed the Writ Application seeking intervention of this Court on the question that the State Government be asked to look into the particular facts, especially, that the industry was already established; apart from manufacturing the permitted yarn, the petitioners had entered into production of other yarns; delay in filing the application for registration would not come into the way of the petitioners; and, the petitioner would still be entitled to the benefits under the Scheme either as an established industry or an industry in the pipeline.

3. It appears that on 17th August, 2004, this Court observed that the pendency of this petition would not preclude the petitioners from making representation to the State Government for reconsidering the decision taken earlier, nor shall the pendency of the petition would preclude the State Government from considering such representation.

4. Learned Counsel for the petitioners submits that a representation was made on 2nd November, 2004, but, till date, final orders have not been passed by the State Government,

probably under an impression that as the Writ petition is pending consideration, it would not be proper for the State to reconsider the entire mat.

5. Learned Counsel for the petitioners submits that the order dated 17th August, 2004 be clarified and the State be asked to decide the representation afresh taking into consideration the reasons submitted by the petitioners for reconsidering the earlier order.

6. In our considered opinion, if the petitioners have already made an application for reconsideration, then, it would not be proper for us to interfere in the matter at this stage. We would leave the subject to the State Government with a direction that within a period of four months from the date of submission of copy of this order, the concerned Officer, competent to decide the representation, shall pass speaking orders on the same. We make it clear that we are not making any observations on the merits of the matter because the merits will have to be taken into consideration by the concerned officer while considering the application for reconsidering the earlier order. We also make it clear that while reconsidering the issue, it would be open for the concerned Officer to take into consideration each and every aspect of the matter. If the result of reconsideration goes against the case of the petitioners, then, the petitioners would be free to approach the appropriate forum in the

appropriate proceedings.

7. The petition is finally disposed of. The interim order earlier granted in favour of the petitioners in relation to payment of interest and penalty shall continue till the final disposal of the representation and the interim order shall lose its efficacy immediately on the decision on the representation. Rule is discharged. No order as to costs.

[***R.S.Garg, J.***]

[***K.M. Mehta, J.***]

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